

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROLYN CLINE)	
Claimant)	
VS.)	
)	Docket No. 251,801
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
INSURANCE COMPANY)	
STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the June 10, 2003 Award of Review and Modification entered by Administrative Law Judge John D. Clark. The Board heard oral argument on November 21, 2003, in Wichita, Kansas.

APPEARANCES

Tom E. Hammond of Wichita, Kansas, appeared for claimant. Eric K. Kuhn of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award of Review and Modification.

ISSUES

Claimant initiated the present proceedings by requesting review and modification of an agreed Award in which claimant received a 12 percent permanent partial general disability, which was based upon her stipulated whole body functional impairment rating. In that Award, which was filed with the Division of Workers Compensation on April 17, 2001, the parties agreed that claimant sustained a compensable work-related injury while working for respondent during the period from July 1997 through February 16, 2000. But

in January 2002, respondent placed claimant on medical leave, which prompted claimant to request a modification in the agreed Award.

In the June 10, 2003 Award of Review and Modification, Judge Clark determined claimant sustained a 100 percent wage loss and a 69 percent task loss for an 84.5 percent permanent partial general disability.

Respondent and its insurance carrier contend Judge Clark erred. They argue claimant's permanent partial general disability benefits should be limited to the whole body functional impairment rating as claimant allegedly did not receive any additional work restrictions from this latest accidental injury. Accordingly, respondent and its insurance carrier request the Board to deny claimant's request to modify the earlier Award.

Conversely, claimant argues that she is entitled to receive a work disability (a permanent partial general disability greater than the functional impairment rating) as respondent assigned her work activities that violated permanent work restrictions that had been placed on her as a result of earlier injuries. Claimant contends the Award of Review and Modification should be affirmed.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and after considering the parties' arguments, the Board finds and concludes:

For the reasons below, the June 10, 2003 Award of Review and Modification should be reversed and claimant's request for a work disability should be denied.

Claimant worked for respondent for more than 20 years and sustained numerous injuries during the tenure of her employment. This claim, however, pertains to bilateral elbow injuries that claimant sustained by a series of accidents from July 1997 through February 16, 2000, which was the period agreed upon by the parties.

As a result of those bilateral elbow injuries, in October 2000 claimant underwent bilateral elbow surgeries. Claimant's surgeon, Dr. J. Mark Melhorn, released claimant from his care in December 2000. The doctor, recognizing that claimant had preexisting medical restrictions, placed no additional restrictions on claimant's activities.

During the period that claimant developed the bilateral elbow injuries, claimant was classified as a polisher. Nevertheless, claimant spent approximately 90 percent of her time

doing sheet metal work due to a lack of polishing work. Both the sheet metal work and polishing work violated permanent medical restrictions that had been placed upon her. And at least some of claimant's supervisors knew that the work claimant was performing violated her restrictions.

When claimant returned to work following her October 2000 bilateral elbow surgeries, claimant performed only polishing duties. In December 2001, claimant transferred to a new department where she was responsible for polishing large fuselage panels. In January 2002, a coworker reported to the department supervisor that claimant was having problems performing her work. The supervisor then checked with the personnel department and learned that claimant had a number of work restrictions. The supervisor then contacted William Hosman, who is a vocational counselor responsible for providing job placement services for respondent's employees.

Mr. Hosman reviewed claimant's medical restrictions and her job duties. After concluding that respondent could not accommodate three of claimant's medical restrictions, respondent sent claimant home on January 10, 2002, on a leave of absence. Later, respondent's Accommodation and Review Board concluded that claimant's medical restrictions could not be accommodated and, therefore, claimant should be laid off due to being medically unable to perform her work assignment. Accordingly, respondent terminated claimant effective February 7, 2002.

Following the February 2002 termination, claimant initiated this request to review and modify the agreed Award that the parties filed with the Division of Workers Compensation in April 2001. In the agreed Award, the parties stipulated that claimant sustained a 12 percent whole body functional impairment due to her bilateral elbow injuries.

The greater weight of the evidence indicates that claimant's bilateral elbow injuries did not increase her level of disability. According to one of claimant's expert medical witnesses, Dr. Pedro A. Murati, the medical restrictions that he placed upon claimant as a result of his February 2001 examination of claimant are the same restrictions that he placed upon claimant before she sustained the series of accidents and mini-traumas that is the subject of this claim. The doctor testified, in part:

Q. (Mr. Kuhn) As I understand it, you saw this lady both before and after the injuries that are the subject of this case; is that correct?

A. (Dr. Murati) Yes.

Q. And before the injuries in this case, you diagnosed her with the same condition, that being bilateral ulnar cubital syndrome; is that correct?

A. Yes.

Q. And in fact, you issued permanent restrictions for that prior condition; is that correct?

A. Yes.

Q. Your restrictions pertaining to the most recent injury are exactly the same, are they not?

A. Yes.¹

The Board concludes this claim is controlled by the Kansas Court of Appeals' decision in *Surls*.² In *Surls*, the Kansas Court of Appeals held an injured worker was not entitled to receive a work disability for a subsequent accident because that accident did not change the worker's medical restrictions and, thus, did not increase the worker's disability.

In summary, claimant's elbow injuries did not affect or increase her medical restrictions. Consequently, claimant's ability to work was exactly the same before and after the bilateral elbow injuries and surgeries that are the subject of this claim. Furthermore, the injuries that claimant had sustained before this claim arose essentially set claimant's level of disability. Accordingly, under *Surls* claimant's permanent partial general disability benefits are limited to her whole body functional impairment rating. Therefore, the agreed Award should not be modified.

AWARD

WHEREFORE, the Board reverses the June 10, 2003 Award of Review and Modification and denies claimant's request to modify the agreed Award.

IT IS SO ORDERED.

¹ Murati Depo. at 16.

² *Surls v. Saginaw Quarries, Inc.*, 27 Kan. App. 2d 90, 998 P.2d 514 (2000).

Dated this ____ day of December 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Tom E. Hammond, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director